

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

**KENNETH EADY and JULIE
EADY,**

Plaintiffs,

v.

**MEDICAL DEPOT, INC. d/b/a
DRIVE DEVILBISS HEALTHCARE,**

Defendant.

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**CASE NUMBER: 3:17-CV-709-WKW
DEMAND FOR JURY TRIAL**

SECOND AMENDED COMPLAINT

COME NOW the Plaintiffs in the above-styled cause and amend the Complaint as follows:

1. The Plaintiff, Kenneth Eady, is an adult resident citizen of Randolph County, Alabama.
2. The Plaintiff, Julie Eady, is an adult resident citizen of Randolph County, Alabama.

Julie Eady is the wife of the Plaintiff, Kenneth Eady.

3. The Defendant, Medical Depot, Inc., d/b/a Drive DeVilbiss Healthcare (hereinafter referred to as “Defendant DeVilbiss”) is a foreign corporation by virtue of its being incorporated in the state of Delaware and having its headquarters located in Port Washington, New York. Defendant DeVilbiss sold, delivered, distributed, designed, fabricated, assembled, altered, manufactured, and/or instructed/directed the manufacture of the forearm crutch made the basis of this lawsuit. Upon information and belief, the Defendant is not licensed to do business in the state of Alabama where the subject forearm crutch was purchased and paid for with Alabama Medicare funds.

4. The Defendant, Fort Metal Plastic Co., Ltd. (hereinafter referred to as “Defendant Fort Metal”) is a foreign company located at Yi He Civil Affairs Industrial Area Luoyang Town,

Boluo County, Huizhou, Guangdong, China. Defendant Fort Metal Plastic Co., Ltd. manufactured or had the forearm crutch fabricated according to specifications and plans and further, upon information and belief, designed the forearm crutch made the basis of this lawsuit. Upon information and belief, the Defendant is not licensed to do business in the state of Alabama where the subject forearm crutch was purchased by the Plaintiff and paid for with Alabama Medicare funds.

STATEMENT OF JURISDICTION

5. The Plaintiffs, Kenneth Eady and Julie Eady, are adult resident citizens of Randolph County, Alabama.

6. The Defendant DeVilbiss is a corporation incorporated under the laws of the state of Delaware with its principal place of business in the state of New York.

7. The Defendant, Fort Metal Plastic Co., Ltd. is a foreign corporation located in the People's Republic of China, Yi He Civil Affairs Industrial Area Luoyang Town, Boluo County, Huizhou, Guangdong, China.

8. The amount in controversy, with interest and costs, exceeds the sum or value of \$75,000.00. Accordingly, there is complete diversity among the parties and this Court has original jurisdiction of this civil action pursuant to 28 U.S.C. § 1332 between "citizens of different states."

VENUE

9. Under 28 U.S.C. § 1391(b), venue in the Eastern Division of the Middle District of Alabama is proper due to a substantial part of the events giving rise to the claim occurring in Randolph County, Alabama. Mr. Eady was at home in Randolph County when the subject forearm crutch malfunctioned, causing his injuries.

STATEMENT OF THE FACTS

10. In or around January of 2016, the Plaintiff, Kenneth Eady, was prescribed a forearm crutch to assist with mobility by Dr. Michael T. Robinson of Roanoke, Alabama, Mr. Eady's primary physician. The prescription for Mr. Eady's forearm crutch was filled by H&M Drugs in Wedowee, Alabama and Mr. Eady purchased the forearm crutch in or around January, 2016, using Medicare benefits. The forearm crutch provided to Mr. Eady pursuant to his doctor's prescription was sold, delivered, distributed, designed, fabricated, assembled, altered, manufactured by, and/or manufactured as directed/instructed by Defendants DeVilbiss and Fort Metal. The subject forearm crutch was a *drive*TM forearm crutch, item #10403, in new condition when purchased by Plaintiff Kenneth Eady. The only identifying information on the product provides the item and product number, and "Drive Medical Design & Manufacturing."

11. On or about October 26, 2016, while Mr. Eady was using the forearm crutch at home, it buckled and broke in two, causing him to fall to the ground, injuring his left leg and causing pain to both hips and left leg, back, neck and left shoulder. Mr. Eady was taken by ambulance to Clay County Hospital where he was treated in the emergency department for his injuries. Mr. Eady's health and quality of life have deteriorated substantially since the subject fall, and continue to do so. In addition, due to the injuries he suffered on or about October 26, 2016, Mr. Eady's life expectancy has greatly diminished. Mr. Eady had previously used leg and foot braces for bilateral foot drop, and suffered a spinal cord injury in 1977 due to 27 foot fall from a tree stand. The fall limited Plaintiff's use of his legs; however, over the years, Mr. Eady had regained enough control of his legs and strength in his upper body to ambulate with the use of forearm crutches. Due to the subject incident, Mr. Eady has now completely lost the use of his left leg.

COUNT I:
LIABILITY OF DEFENDANTS MEDICAL DEPOT, INC.,
D/B/A DRIVE DEVILBISS HEALTHCARE AND FORT METAL PLASTIC CO., LTD.
UNDER THE ALABAMA EXTENDED MANUFACTURER'S LIABILITY DOCTRINE
(AEMLD)

12. Plaintiffs reaver and reallege all of the allegations in the preceding paragraphs as if set out in full herein.

13. At the time of the incident made the basis of this lawsuit and for a substantial period of time prior thereto, Defendant Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare and Defendant Fort Metal Plastic Co., Ltd. were engaged in the business of selling, delivering, distributing, designing, fabricating, assembling, altering, manufacturing, and/or instructing/directing the manufacture of forearm crutches of the type being used by the Plaintiff, Kenneth Eady, at the time of the incident made the basis of this lawsuit throughout the United States, including the state of Alabama, for use by certain members of the general public. Defendants DeVilbiss and Fort Metal, during said period of time and for valuable consideration, manufactured and/or instructed/directed the manufacture of the subject forearm crutch, to its specifications and then sold and/or distributed the forearm crutch which injured the Plaintiff Kenneth Eady.

14. At the aforesaid place and time, the forearm crutch which was in substantially the same condition as when it was manufactured, sold, and/or distributed by Defendants DeVilbiss and Fort Metal, it was being used by Plaintiff Kenneth Eady as an ordinary consumer in a manner that was foreseeable of such products. Kenneth Eady weighed 175 pounds, well within the maximum weight limit of 300 pounds listed in the specifications for forearm crutch #10403. The forearm crutch was not reasonably safe when being used in a foreseeable manner, but to the contrary, it was defective and unreasonably dangerous to users of the product when being so used

in a foreseeable manner. The particular forearm crutch Plaintiff Kenneth Eady was using until its collapse and failure was 1) defective by design in that it was unreasonably or inherently dangerous, risky, or useless; or 2) defective as a result of manufacturing deficiencies because of inferior workmanship and/or inferior or lesser quality materials; or 3) defective for some other reason presently unknown to Plaintiff, such as improper assembly.

15. The foregoing wrongful conduct of Defendant DeVilbiss was a proximate cause of Plaintiff Kenneth Eady's injuries and renders said Defendants liable to Plaintiffs pursuant to the Alabama Extended Manufacturer's Liability Doctrine (AEMLD).

WHEREFORE, the Plaintiffs demand judgment against Defendants Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare and Fort Metal Plastic Co., Ltd., for compensatory and punitive damages in a sum to be established by the jury, and the costs of this proceeding.

COUNT II:
NELGIGENCE AND/OR WANTONNESS OF DEFENDANTS MEDICAL DEPOT, INC.,
D/B/A DRIVE DEVILBISS HEALTHCARE AND FORT METAL PLASTIC CO., LTD.

16. Plaintiffs reaver and reallege all of the allegations in the preceding paragraphs as if set out in full herein.

17. The Defendants, Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare and Fort Metal Plastic Co., Ltd., negligently and/or wantonly sold, delivered, distributed, designed, manufactured, fabricated, assembled, altered, and/or instructed/directed the manufacture of the subject forearm crutch. As a result of this negligent and/or wanton conduct, the Plaintiff, Kenneth Eady was caused to suffer serious injuries.

WHEREFORE, the Plaintiffs demand judgment against Defendants DeVilbiss and Fort Metal for compensatory and punitive damages in a sum to be established by the jury, and the costs of this proceeding.

COUNT III:
BREACH OF WARRANTY

18. Plaintiffs reaver and reallege all of the allegations in the preceding paragraphs as if set out in full herein.

19. The Defendants, Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare and Fort Metal Plastic Co. Ltd., expressly and/or impliedly warranted that the subject forearm crutch made the subject of this lawsuit was reasonably fit and suitable for the purposes for which it was intended to be used. Plaintiffs aver that Kenneth Eady was a beneficiary of this warranty by the Defendants. Plaintiffs aver that said Defendants breached said express and/or implied warranties in that the said forearm crutch was not reasonably fit and suitable for the purposes for which it was intended to be used but, on the contrary, the said forearm crutch was in a dangerously defective and unsafe condition.

20. As a proximate consequence of the Defendants' said negligence and/or wantonness, the Plaintiffs were caused to suffer serious injuries.

WHEREFORE, the Plaintiffs demand judgment against Defendants Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare and Fort Metal Plastic Co., Ltd. for compensatory damages to be established by a jury, and the costs of this proceeding.

COUNT IV:
LOSS OF CONSORTIUM

21. The Plaintiffs reaver and reallege all of the allegations in the preceding paragraphs as if set out in full herein.

22. At the time of the incident made the basis of this Complaint and at present, Plaintiff

Julie Eady, was the wife of Plaintiff Kenneth Eady. As a result of the serious injuries to her husband, Julie Eady has lost the consortium, support, services, companionship, and affection of her husband.

WHEREFORE, Plaintiff Julie Eady demands judgment for compensatory and punitive damages against Defendants Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare and Fort Metal Plastic Co., Ltd. in an amount to be determined by the jury, plus the cost of this action.

Done on this the 20th day of April, 2018.

/s/ Randall S. Haynes

RANDALL S. HAYNES
(ASB-2865-A52R)

/s/ Taylor A. Pharr

TAYLOR A. PHARR
(ASB-8611-D84S)
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CERTIFICATE OF SERVICE

I hereby certify that on this the 20th day of April, 2018, I served the foregoing First Amended Complaint by electronic mail and/or U.S. Mail, postage prepaid and properly addressed to the following attorneys of record:

Sara M. Turner, Esq.
Austin K. Smith, Esq.
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
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/s/Randall S. Haynes
OF COUNSEL